

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO. 2:11cr3 KS-MTP

CHARLES W. IRBY, JR.

ORDER

This cause is before the Court on the issue of the requirement of a supporting witness for the admission of 1099 forms to establish income. A subpoenaed witness has questioned the necessity of traveling to Mississippi to support the introduction of documents. Federal Rule of Evidence 902(11) establishes documents that are self-authenticating. Federal Rule of Evidence 902(11) CERTIFIED DOMESTIC RECORDS OF REGULARLY CONDUCTED ACTIVITY says:

The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner compliant with any act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record -

- (A) was made at or near the time of the concurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
- (B) was kept in the course of the regularly conducted activity;
and
- (C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all

adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

The Government has apparently given notice to the Defendant that Form 1099's will be offered into evidence. If the Government establishes what the form is, establishes its relevancy, and complies with the requirements of this rule, then the documents are admissible. The weight and sufficiency of the evidence will be determined by the Jury, but these documents are self-authenticating pursuant to this Rule.

U.S.C. §1746 establishes the oath or affirmation necessary to be attached to the documents for their admission.

There is no formal motion before the Court on this, but an ore tenus type motion was made by the defendant and that is the purpose of this ruling.

SO ORDERED this the 19th day of August, 2011.

s/ Keith Starrett
UNITED STATES DISTRICT JUDGE